



Memorandum 34 /2005

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
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Joseph E. Connarton, *Executive Director*

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Proposed Regulations Clarifying the Definition of Regular Compensation

DATE: November 9, 2005

Over the last few months, the Commission and its staff have been considering the regular compensation status of payments under so-called salary augmentation or enhanced longevity plans. Such plans, usually contained in collectively bargained agreements, provide a multi-year salary increase that does not become a permanent part of the employee's compensation. The plans may require certain longevity and may require the surrender of the right to receive payments for unused sick leave at retirement. Some of the plans required the member to give notice of termination or retirement, while others did not.

After careful consideration and review of the relevant cases in this regard, the Commission has determined its regulation dealing with regular compensation, 840 CMR 15.03, is in need of amendment to clarify the definition of regular compensation for purposes of G.L. 32. Attached is a copy of the proposed amendment to the regulation. Public comments will accepted through December 13, 2005.

Hearings are scheduled for:

November 30, 2005 at 1:00 pm
Plymouth Public Library,
132 South Street, Plymouth, MA 02360

December 2, 2005 at 1:00 pm
The Clarion Hotel and Conference Center
One Atwood Drive, Northampton, MA 01060

December 6, 2005 at 2:00 pm
McCormack Building, Conference Room 3 – on the 21st floor
One Ashburton Place, Boston, MA 02108

December 8, 2005 at 10:00 am
Public Employee Retirement Administration Commission Training Room
5 Middlesex Avenue – 3rd Floor, Somerville, MA 02145

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While the regulations are being promulgated, Retirement Boards are advised to carefully review any compensation plans, paying special attention to the factors that will result in the payments NOT considered to be regular compensation. These factors include:

- A requirement of giving notice of retirement upon completion of the plan;
- A requirement of retirement or separation from service or pay upon completion of the plan;
- A amounts paid as bonuses;
- A reduction in accrued sick leave ("sick leave buyback");
- A retirement benefit that would result in financial liabilities so large that in the aggregate it may create, in the opinion of the board, an untoward, massive, continuing burden on the retirement system.

It is important to keep in mind that cities, towns, unions and individuals may agree to pay and receive any lawful payments, but any such agreement does not automatically make the payments regular compensation. G.L. c. 32 cannot be superseded by any collectively or individually bargained agreement. Retirement boards and the Commission retain the legal authority to determine whether payments are regular compensation for retirement purposes.

We trust the foregoing is of assistance. We would encourage you to share this memorandum with the employers whose employees make up the membership of the Retirement System and the collective bargaining organizations that represent the employees. If you have further questions or concerns, please contact this office.

Enclosures